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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/474,542	12/29/1999	ELWYN B. DAVIES	476-1884	2366
7590	07/07/2004		EXAMINER	
William M Lee Jr Barnes & Thornburg P O BOX 2786 CHICAGO, IL 60690-2786			PATEL, AJIT	
			ART UNIT	PAPER NUMBER
			2664	12

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/474,542	DAVIES, ELWYN B.
	<b>Examiner</b>	<b>Art Unit</b>
	AJIT G. PATEL	2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 May 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) 9 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

Art Unit: 2664

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

2. Claim 1 and 8 are objected to because of the following informalities: In claim 1, lines 12-13, the recitation of "a said customer" should be changed to --said customer--. Same error appears in claim 8. Appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-~~8~~ are rejected under 35 U.S.C. 102(e) as being anticipated by Shirai et al.

Regarding claims 1,7, and 8, Shirai et al disclose a communication system incorporating the steps of monitoring the network to determine an actual, or expected, congestion point (6 of figs. 1 and 2); maintaining an express route comprising one or more the links between two end elements which bypasses the congestion point (lines 51-60, col. 11); identifying, at one or both the end elements, data packets originating from the user and destined for the customer or data packets originating from

the customer and destined for the user, and diverting the packets along the express route (lines 36-53, col. 14; lines 25-31, col. 15).

Regarding claim 2, Shirai et al inherently disclose that the route is bi-directional since the communication is always initiated from source to destination and from destination to source terminals.

Regarding claim 3, Shirai et al disclose the limitation "maintaining step comprises reserving bandwidth on the links forming the route" (lines 16-27, col. 29).

Regarding claim 4, Shirai et al disclose the limitation "the route has one end element adjacent or forming the network entry point of the user" (13 or 14 of fig. 7).

Regarding claim 5, Shirai et al disclose the limitation "wherein the diverting step comprises modifying a forwarding table within one end element such that data packets having a destination address corresponding to the user are diverted along the route (fig. 15).

Regarding claim 6, Shirai et al disclose the limitation "wherein the diverting step comprising filtering data packets within the other end element such that data packets having a source address corresponding to the user are diverted along the route" ( lines 16-24, col. 20).

5. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AJIT G. PATEL whose telephone number is 703-308-5347. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 703-305-4366. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AP

  
Ajit Patel  
Primary Examiner